

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

SERVICE EMPLOYEES INTERNATIONAL )	)	
UNION, SOUTHWESTERN JOINT )	)	
COUNCIL NO. 29, )	)	
	)	
Petitioner, )	)	
	)	
vs. )	)	Public Case No. 84-111
	)	
DEPARTMENT OF LABOR AND )	)	
INDUSTRIAL RELATIONS, DIVISION )	)	
OF EMPLOYMENT SECURITY, )	)	
	)	
Respondent. )	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon Service Employees International Union, Southwestern Joint Council No. 29, filing a Petition for Certification as Public Employee Representative of certain employees of the Department of Labor and Industrial Relations, Division of Employment Security. Hearings were held on April 23, and April 24, 1984 in Jefferson City, Missouri, at which representatives of the Petitioner and Respondent were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Norman Litz, and employee member James O'Mara. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by Section 105.525, R.S.Mo., 1978.

At the hearings, the parties were given full opportunity to present evidence. The Board, after careful review of the evidence, sets forth the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

The Division of Employment Security (DES) is one of six divisions within the Department of Labor and Industrial Relations (Department). The objectives of the DES are to find employment for the unemployed, to collect contributions from employers to provide unemployment insurance payments, and to pay unemployment insurance benefits to the eligible unemployed.

The DES falls within the administrative umbrella of the Department of Labor and Industrial Relations, which also includes the Division of Workers' Compensation, Division of Labor Standards, Commission on the Status of Women, Committee on Employment of the Handicapped and the State Board of Mediation. Although evidence was adduced that employees throughout the Department are subject to common rules regarding fringe benefits and in certain isolated instances share work locations, the record as a whole indicates that the DES is autonomous from the other five divisions within the Department. The functions of the DES are not handled by any other division within the Department and as a whole DES employees have little contact with other non-DES employees. Unlike the other divisions within the Department, the DES is funded with federal monies only. Further, in most cases, DES employees have different work places than other departmental employees, and have different training, pay plans, and rules and regulations regarding employment.

DES maintains a central office in Jefferson City and has approximately 34 local offices situated throughout the state. As of March 31, 1984, the DES employed approximately 1,763 employees, with some 699 of these employees assigned to the central office. Each local office includes employment services personnel who assist with job placement and claims personnel who process and adjudicate unemployment benefit claims. These employees are supported by a clerical and data processing staff. The job placement and claims personnel assist applicants by using computer terminals connected to the central computer located in Jefferson City. The computer compiles

information concerning job openings, employer contributions, and information concerning the individual applicant. When there is an increase in the volume of claims or a shortage of staff, employees normally assigned to employment service duties or claims will assist that section which needs help.

The informal career ladder established in the DES allows employees within the division to move up through the ranks to more challenging DES positions. Testimony of several witnesses indicated that the promotional process frequently involves transfer from claims positions to employment services positions, and transfer from one local office another or to the central office. Approximately one fourth of the employment services personnel and claims personnel begin their careers as clerks within the DES. When DES employees are promoted beyond pay grade sixteen they generally are promoted to positions of Claims Supervisor I, Employment Services Supervisor I or Contributions Supervisor I. Much evidence was presented at the hearings concerning the job duties of these employees and is summarized below:

SUPERVISORS I: The Claims, Contributions and Employment Services Supervisors I are paid at pay grade level 17. These employees are assigned either to the central office in Jefferson City or to one of the local offices situated throughout the state. A Supervisor I assigned to a local office may have from five to nine employees working under them, usually the number of such employees being four or five.

Although questionnaires completed by employees indicated otherwise, substantial evidence adduced at the hearings established that approximately 75% of the Supervisor I's time is spent doing the same work as their subordinates. The balance of their time is spent answering questions asked by other employees concerning troublesome files. The questions are generally resolved by reference to a rather detailed manual published by the DES which covers most contingencies.

Job assignments are made by a mechanical process whereby an applicant is assigned to a technician based on the applicant's social security number or the first

letter of the applicant's last name. No evidence indicates that a Supervisor I effectively recommends or plays any role in the hiring, transfer, discipline or discharge of other employees. A Supervisor I does complete service ratings on other employees but it must be approved by the office manager before signed by the Supervisor I. A Supervisor I may approve vacation time for subordinates for periods no greater than two days.

SUPERVISORS II: Those promoted from a Supervisor I position are usually promoted to Claims Supervisor II, Employment Services Supervisor II or Contributions Supervisor II. The Supervisors II are paid at the pay grade of 19. The Supervisor II usually reports directly to a Supervisor III who assumes responsibility for the daily control of the work unit. In most cases, the Supervisor II works with one Supervisor I and the employees directly subordinate to the Supervisor I. The organizational charts usually provide that a Supervisor II is in charge of six employees. One Claims Supervisor II testified that at a local office he had five subordinate employees whereas at the central office there were eight such employees.

Testimony of one Supervisor II indicated that approximately 50% of his time was spent doing the same work as that done by subordinate employees. Like Supervisors I, the remaining time is spent with problem cases which are often resolved by reference to DES manuals. The caseload is assigned to subordinates in a mechanical manner by which it is evenly distributed among the employees. Although the Supervisors II will evaluate certain employees and on occasion make recommendations concerning personnel matters, no substantial evidence was presented which indicates that a Supervisor II effectively recommends the discipline, discharge, hiring or promotion of other employees.

APPEALS REFEREES: The DES employs approximately 34 employees as Appeals Referees. These employees perform a quasi-judicial function in that they are adjudicate appeals from those aggrieved by decisions either granting or denying

unemployment benefits. A DES employee is eligible for promotion to position of Appeals Referee I after six years of experience in the DES or with requisite college education. An Appeals Referee II must have one year of experience as an Appeals Referee I or degree from an accredited law school or seven years of DES experience. Although a law degree is not required, approximately seven of the 21 Appeals Referees I's and II's are attorneys. One must be a licensed attorney to qualify as an Appeals Referee III or IV.

Job duties of an Appeals Referee I or II do not differ. They require specialized skills and knowledge of the DES. The Appeals Referee I or II must know state and federal law relating to unemployment insurance and know basic principles concerning quasi-judicial hearings. The work of an Appeals Referee I and II is done with little, if any, supervision in that the hearings are conducted independently as is the writing of the opinions. The work must be characterized as being intellectual in nature rather than routine mental, manual or physical work. Appeals Referees I are paid at the pay grade of 22 whereas the Appeals Referee II are paid at the pay grade of 24.

NON-PERMANENT EMPLOYEES: Employees of the DES can be grouped in five different categories: Original, part-time, temporary, provisional and emergency. Original appointments are those employees on a full-time basis who have completed their probationary period. Temporary employees are appointed to perform work on an intermittent basis, with their annual hours not to exceed 1,040. Temporary employees may become permanent employees only through the process of selection for an original appointment and completion of the probationary period. Part-time employees are limited to the classification of Employment Security Deputy I, and selection may be made from any one of the ten highest ranking eligibles certified by the State Personnel Division. These employees are scheduled to work as needed during peak work periods and attain regular status after satisfactory completion of a twelve-month probationary period. Provisional employees must meet the minimum qualifications for the

classification to which the individual is appointed. To retain the job on a permanent basis, the provisional employee must take the first Merit System Examination offered for the classification and be among the ten highest ranked eligibles available. If the employee does not pass the exam, they cannot be retained as permanent employees. Emergency employees are hired for a period not to exceed 90 calendar days from the date of appointment. Probationary employees are all employees receiving an original appointment and must satisfactorily complete a six-month probationary period. If it is determined that the employee has not satisfactorily performed the duties of the position, the probationary period may be extended an additional six months, or the employee may be dismissed. Provisional, part-time and probationary employees are eligible for all fringe benefits received by permanent full-time employees except contributions to the Missouri State Retirement System.

### **CONCLUSIONS OF LAW**

The Service Employees International Union, Southwestern Joint Council 29 (Petitioner), has petitioned to be certified as public employee representative for a limited number of employees (hereinafter referred to as the 700 series employees) employed by the Division of Employment Security of the Department of Labor and Industrial Relations. The respondent contends that a department-wide bargaining unit should be certified, including certain employees employed outside the DES but within the other divisions of the Department of Labor and Industrial Relations. At the hearing, the parties stipulated to the inclusion and exclusion of several employees.

The issues before the Board are (1) what constitutes an appropriate bargaining unit among the employees in question; (2) whether certain employees --- Claims Supervisors I and II, Contributions Supervisors I and II and Employment Services Supervisors I and II --- are supervisory employees and therefore should be excluded from the unit; (3) whether employees classified as Appeals Referee I and II are

professional employees to be excluded from the unit; and (4) whether probationary and part-time positions within the DES should be included in the bargaining unit.

(1) SCOPE OF BARGAINING UNIT. Petitioner contends that the 700 series employees within the DES have a clear and identifiable community of interest which requires the Board to certify the 700 series employees as an appropriate bargaining unit. In contrast, the respondent argues that all non-supervisory, professional or managerial employees within the Department of Labor and Industrial Relations share a community of interest which justifies certification of a department-wide unit.

Section 105.500(1), R.S.Mo. 1978, defines "appropriate unit" as a:

Unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Section 105.500(3), R.S.Mo. 1978, defines "public body" as:

The State of Missouri, or any officer, agency, department, bureau, division, board or commission of the state or any other political subdivision of or within the state.

Clearly, the language of the statutes allows the Board much latitude in determining a bargaining unit should be department-wide, division-wide or some smaller unit. The issue before the Board is whether the employees in question share a clear and identifiable community of interest. In Service Employees International Union, Local 96, AFL-CIO v. City of Blue Springs, Missouri, Public Case No. 79-031 (SBM 1980), the Board enumerated certain factors to be considered in determining community of interest questions. Those factors include (1) the amount of contact and interchange between the employees concerned; (2) similarity in pay, fringe benefits and type of work; and (3) whether or not there is common supervision of the employees. Another factor to be considered in making appropriate bargaining unit determinations is that the Board has consistently guarded against over-fragmentation of bargaining units. The facts of this case are applied to the factors listed above convinces the Board that neither a limited

700 series unit nor a department-wide unit is appropriate. Instead, an appropriate bargaining unit shall consist of certain employees within DES.

No convincing evidence was presented that would indicate that there exists any substantial interchange or contact between DES employees and those employed by other divisions within the Department of Labor and Industrial Relations. Clearly, there is no common supervision shared by DES and non-DES employees. Unlike other divisions within the department, the DES is funded solely by federal monies. Further, job functions served by DES is distinct and separate from the other divisions within the Department and there is little transfer of employees from the DES to other divisions within the Department.

As for petitioner's argument that a small unit of only 700 series employees should be certified, the Board must point out that the non-700 series employees of the DES have much contact and interchange with 700 series employees and often have common supervision. Most importantly, however, is that the Board must avoid the overfragmentation of bargaining units. Therefore, the Board rules that the employees of the DES share a clear and identifiable community of interest and therefore a division-wide bargaining unit is appropriate.

(2) SUPERVISORS I AND II: Petitioner contends that those employees of the DES classified as Employment Services Supervisor I and II, Claims Supervisor I and II, and Contributions Supervisor I and II are not true supervisors and therefore share a clear and identifiable community of interest with the other employees of the DES and accordingly should be included in the appropriate bargaining unit. On the other hand, the respondent contends that those employees are supervisory employees and therefore should be excluded. The Board has long recognized that certain employees possess sufficient supervisory status to warrant their exclusion from a bargaining unit of



other employees. In Golden Valley Registered Nurses Association v. Golden Valley Memorial Hospital, Public Case No. 102 (SBM 1980), and other cases, this Board has articulated factors to consider in determining supervisory status of employees. The effort is to determine whether a particular employee is a true "supervisor" whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees or whether the employee is merely a working foreman whose responsibilities would not justify exclusion from an appropriate bargaining unit. The factors to be considered in reaching this determination include:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the same employee;
4. Level of pay, including an evaluation of whether a person has paid for their skill or for their supervision of other employees;
5. Whether a person primarily supervises an activity or primarily supervises other employees;
6. Whether a person is a working supervisor or whether they spend a substantial majority of work time overseeing others; and
7. The amount of independent judgment and discretion exercised in the supervision of employees.

An application of the factors cited above to the facts of this case is set out below.

Viewing the record as a whole, there is insufficient evidence to warrant the conclusion that Supervisors I and II effectively recommend the hiring, promotion, transfer, discipline or discharge of other employees. Further, job assignments given their subordinates are usually done in a mechanical manner by which the work is distributed evenly. The number of employees subordinate to a Supervisor I or Supervisor II ranges from four to nine employees. This small number is not indicative of

supervisory status. Most important, however, is that Supervisors I and II spend a substantial portion of their time performing duties identical to those of subordinate employees. Further, the record as a whole indicates that Supervisors I and II exercise little discretion or independent judgment in dealing with other employees in that most problems are resolved by reference to DES manuals. In view of the foregoing, the Board concludes that Supervisors I and II do not exercise authority sufficient to be considered supervisors. Instead, the authority exercised by Supervisors I and II is closer to that of a working foreman rather than that of a true supervisor. Consequently, Supervisors I and II shall be included in that appropriate bargaining unit.

(3) PROFESSIONAL EMPLOYEES: Because of a lack of community of interest with other employees, the Board shall not include into an appropriate bargaining unit those employees deemed to be "professionals". The factors to be considered in determining whether an employee is an excludable professional include whether the employee is engaged in work (1) which is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (2) which requires the consistent exercise of discretion; and (3) which requires an advanced educational degree. Undisputed evidence established that Appeals Referees I and II performed quasi-judicial functions which require the consistent exercise of discretion and judgment and advanced knowledge and training concerning relevant law. Without question the Appeals Referees I and II's work must be categorized as being intellectual rather than routine physical. Although a law degree is not required, some seven of the 24 Appeals Referees in question are lawyers. Considering the work performed by the Appeals Referees I and II and the consistent exercise of discretion required of these employees, the Board rules that the Appeals Referees I and II are in fact professional employees and therefore shall be excluded from the unit.

(4) NON-PERMANENT EMPLOYEES: Petitioner argues that part-time, provisional and probationary employees share a community of interest with permanent employees in the same job classifications and therefore should be included in the bargaining unit. The Board agrees. DES policies provide that part-time employees work only in the job classification of Employment Security Deputy I and allows such employees to attain regular status after successful completion of a twelve-month probationary period. As for the provisional employees, they may retain their position on a permanent basis if they take the first merit system examination offered and are among the ten highest ranking eligibles available. In regard to probationary employees, they are allowed full-time status after successful completion of the six-month probationary period. Thus, each of the aforementioned class of employees have a reasonable expectation to become permanent in the positions they occupy. Further, the duties of provisional, part-time and probationary employees are the same as those with permanent positions in the same job classifications and have identical fringe benefits except they receive no contributions to the State Retirement Fund. Consequently, the Board rules that the part-time, provisional and probationary employees have a clear and identifiable community of interest with permanent employees in the same job classifications and therefore shall be included in the bargaining unit.

In contrast, the emergency employees are limited to a 90 day appointment for each calendar year. There is no expectation that an emergency appointment will become permanent. Similarly, those employees classified as temporary employees were hired for a fixed term without the opportunity to attain permanent status in the position they occupy unless they are selected for an original appointment to a permanent position. Because emergency and temporary employees of the DES do not have a reasonable expectation that they will become permanent in their positions, the

Board concludes that they lack a community of interest other DES employees and therefore should be excluded from the bargaining unit.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

All employees in the Division of Employment Security listed in Schedule A attached hereto, including Claims Supervisors I and II, Contributions Supervisors I and II, Employment Service Supervisors I and II, and all part-time, provisional and probationary employees in the positions listed in Schedule A, but excluding all supervisory, managerial, confidential, and all temporary and emergency employees and Appeals Referees I and II.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than 60 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by petitioner.

IT IS HEREBY ORDERED that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen days from the date of receipt of this decision an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll immediately preceding the date of this decision.\*

Signed this 30th day of August, 1984.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ Norman Litz

Norman Litz, Employer Member

/s/ James O'Mara

James O'Mara, Employee Member

\*It is also ordered that the Petitioner submit to the Chairman any additional authorization cards that they may have within three (3) days from receipt of the decision.

## **SCHEDULE "A"**

0001	Clerk I
0002	Clerk II
0003	Clerk III
0004	Clerk IV
0011	Clerk Steno I
0012	Clerk Steno II
0013	Clerk Steno III
0021	Clerk Typist I
0022	Clerk Typist II
0023	Clerk Typist III
0025	Composing Equipment Operator I
0026	Composing Equipment Operator II
0057	Auxiliary Equipment Operator I
0060	Mailing Equipment Operator
0067	Photographic Machine Operator
0073	Duplicating Equipment Operator I
0074	Duplicating Equipment Operator II
0075	Duplicating Equipment Operator III
0083	Switchboard Operator I
0084	Switchboard Operator II
0101	Data Entry Operator I
0102	Data Entry Operator II
0119	Data Control Clerk II
0132	Computer Operator Trainee
0133	Computer Operator I
0134	Computer Operator II
0135	Computer Operator III
0141	Programmer Trainee
0142	Programmer I
0143	Programmer II
0152	Programmer Analyst I
0153	Programmer Analyst II
0163	Systems Analyst I
0164	Systems Analyst II
0172	Systems Programmer I
0173	Systems Programmer II
0201	Stores Clerk
0301	Account Clerk I
0302	Account Clerk II
0311	Accountant I
0431	Research Analyst I
0432	Research Analyst II
0451	Public Information Specialist I
0452	Public Information Specialist II
0702	Employment Security Deputy II
0703	Employment Service Technician
0704	Employment Service Supervisor I
0705	Employment Service Supervisor II

0709	Disabled Veterans Representative
0710	Employer Services Representative I
0711	Employer Services Representative II
0714	Field Auditor I
0715	Field Auditor II
0719	Claims Examiner
0720	Claims Technician
0721	Claims Supervisor I
0722	Claims Supervisor II
0727	Claims Auditor (New class)
0729	Contributions Deputy
0731	Contributions Technician
0732	Contributions Supervisor I
0733	Contributions Supervisor II
0761	Administrative Analyst I
0762	Administrative Analyst II
0769	Employment Security Aide I
0770	Employment Security Aide II
0771	Employment Security Aide III
0785	Employment Counselor I
0786	Employment Counselor II
2001	Custodial Worker I
2002	Custodial Worker II
4417	Rehabilitation Trainee
6011	Maintenance Man I
6012	Maintenance Man II
6021	Automotive Driver
6052	Carpenter
6341	Staff Artist I
6342	Staff Artist II
6363	Photographer